

UNITED STATES
PATENT AND TRADEMARK OFFICE



Patent Public Advisory Committee Quarterly Meeting

Patent Trial and Appeal Board Update

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November 19, 2015

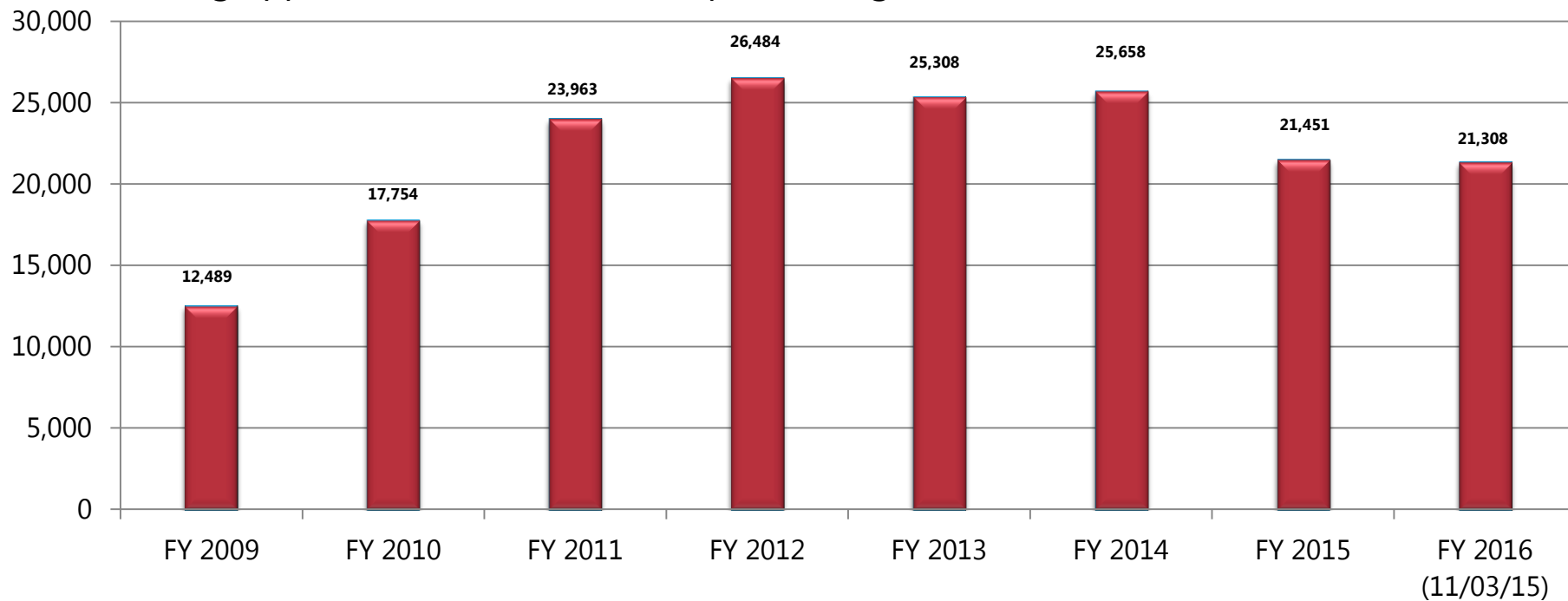
UNITED STATES
PATENT AND TRADEMARK OFFICE



Appeals Statistics

PTAB Inventory – Pending Ex Parte Appeals

(excluding appeals from reexamination proceedings)

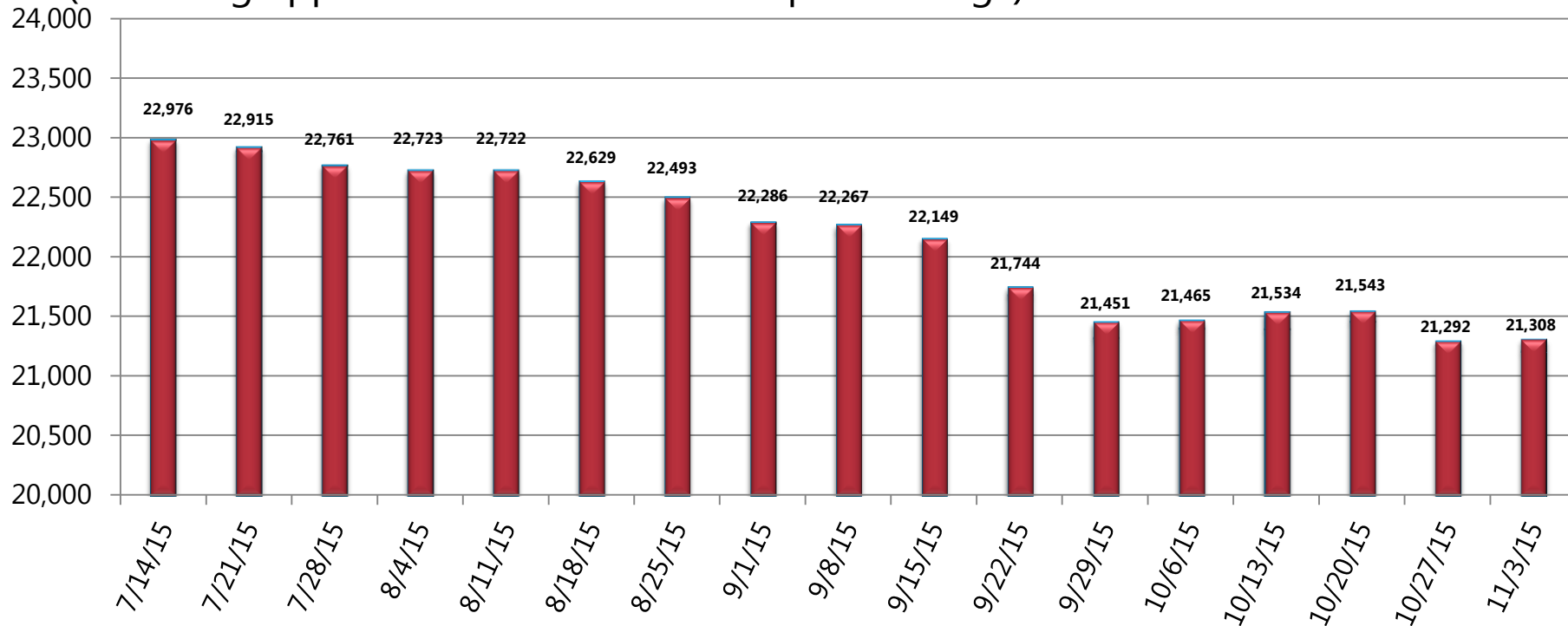


(11/03/15)



PTAB Inventory – Pending Ex Parte Appeals

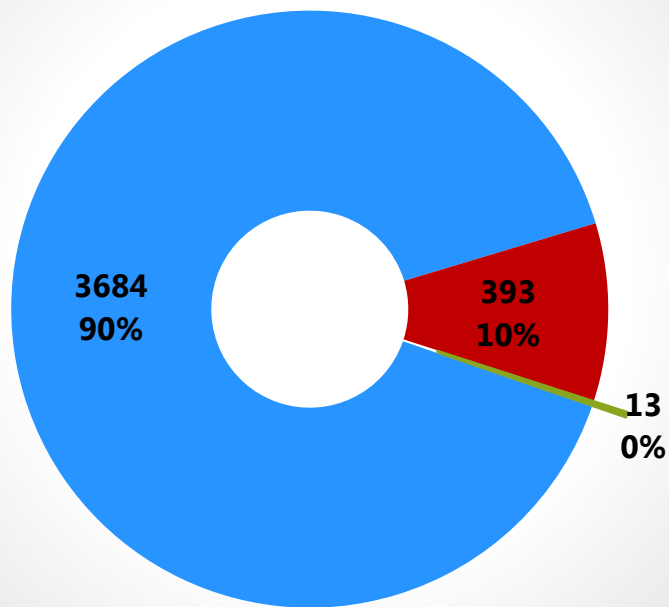
(excluding appeals from reexamination proceedings)



AIA Statistics

4090 Total AIA Petitions*

Cumulative from 09/16/2012



■ Total IPR Petitions ■ Total CBM Petitions ■ Total PGR Petitions

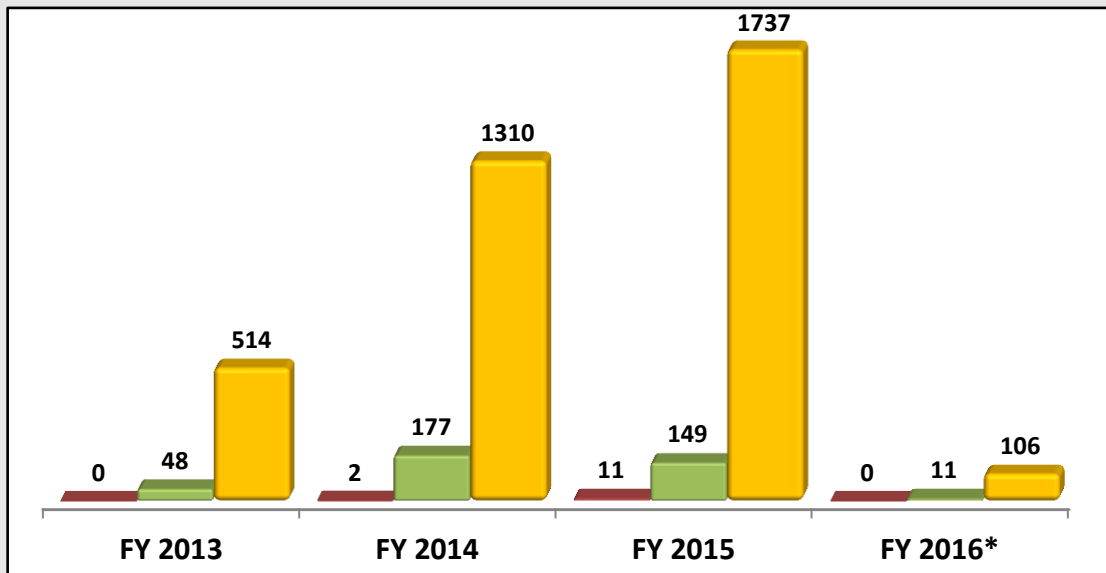
Narrative:

This pie chart shows the total number of cumulative AIA petitions filed to date broken out by trial type (i.e., IPR, CBM, and PGR).

***Data current as of: 10/31/2015**

Number of AIA Petitions Filed by Fiscal Year by Type

■ PGR ■ CBM ■ IPR

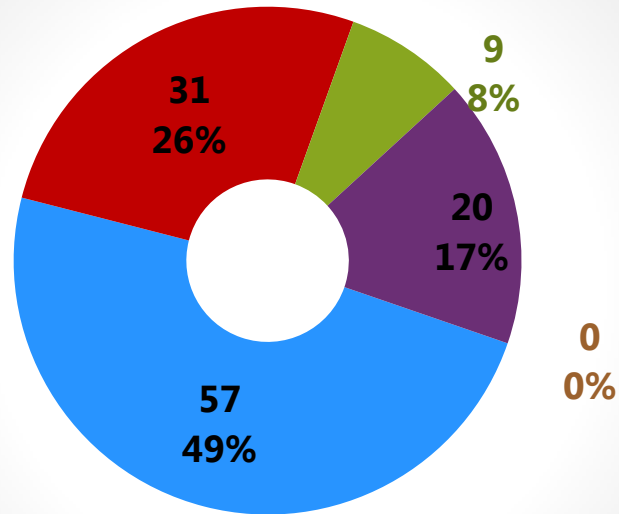


Narrative:

This bar graph depicts the number of AIA petitions filed each fiscal year, with each bar showing the filings for that fiscal year by trial type (i.e., IPR, CBM, and PGR).

***Data current as of: 10/31/2015**

117 Total AIA Petitions in FY 16*
(Technology Breakdown)



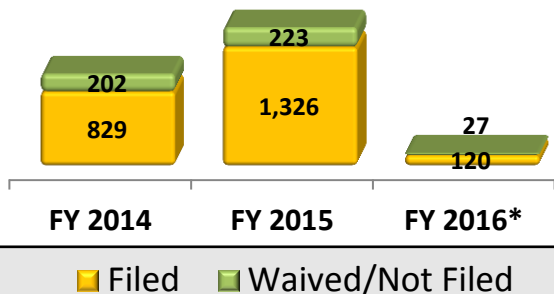
- Electrical/Computer - TCs 2100, 2400, 2600, 2800
- Mechanical/Business Method - TCs 3600, 3700
- Chemical - TC 1700
- Bio/Pharma - TC 1600
- Design - TC 2900

Narrative:

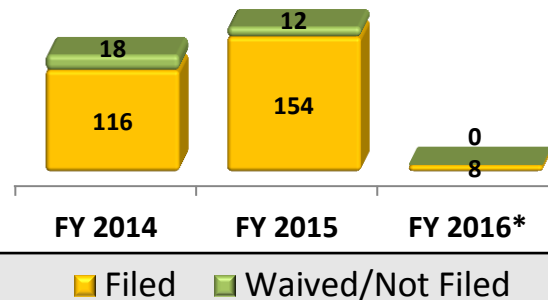
This pie chart shows the total number of AIA petitions filed in the current fiscal year to date as well as the number and percentage of these petitions broken down by technology.

***Data current as of: 10/31/2015**

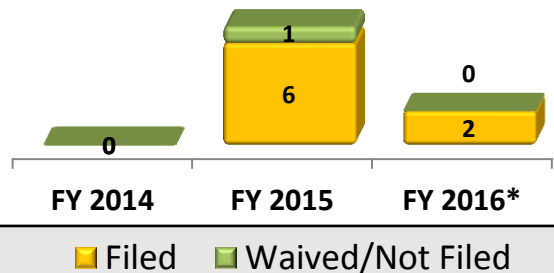
**IPR - Number of Patent Owner
Preliminary Responses by Fiscal Year**



**CBM - Number of Patent Owner
Preliminary Responses by Fiscal Year**



**PGR - Number of Patent Owner
Preliminary Responses by Fiscal Year**

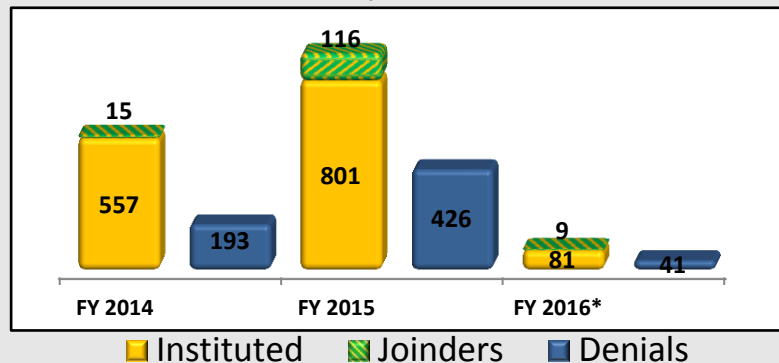


Narrative:

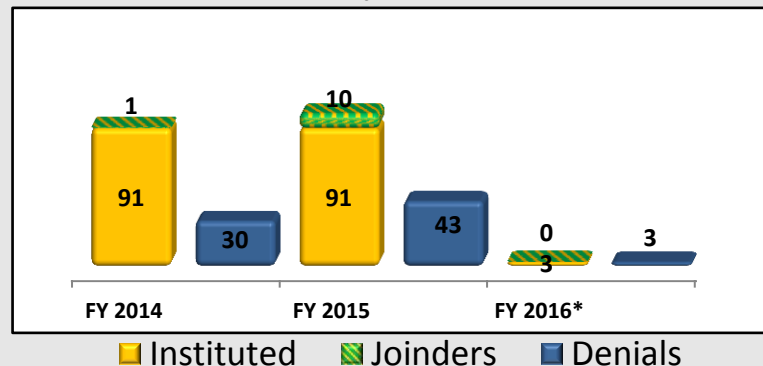
These three sets of bar graphs show the number of patent owner preliminary responses filed and waived/not filed each fiscal year in IPR, CBM, and PGR proceedings.

***Data current as of: 10/31/2015**

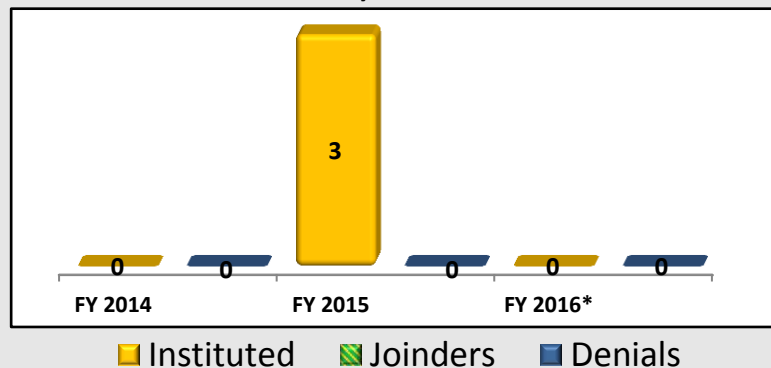
IPR - Number of Decisions On Institution Per Fiscal Year by Outcome



CBM - Number of Decisions On Institution Per Fiscal Year by Outcome



PGR - Number of Decisions On Institution Per Fiscal Year by Outcome

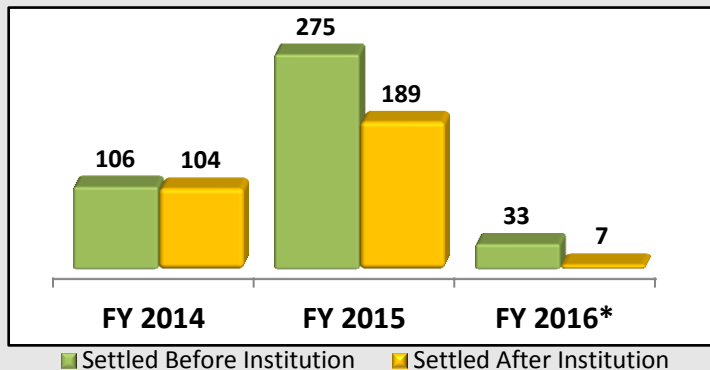


Narrative:

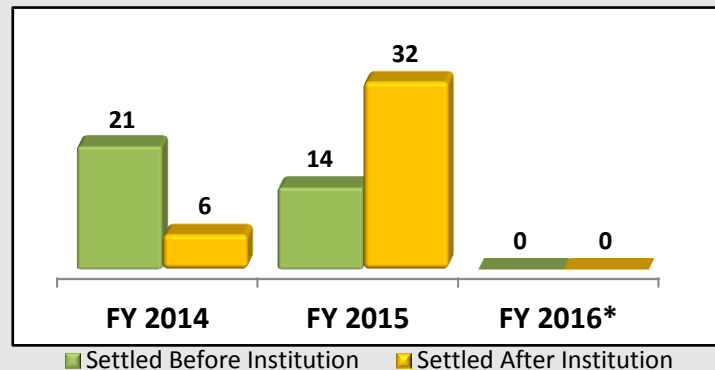
These three sets of bar graphs show the number of decisions on institution by fiscal year broken out by trials instituted (including joinders) and trials denied in IPR, CBM, and PGR proceedings. A trial that is instituted in part is counted as an institution in these bar graphs.

***Data current as of: 10/31/2015**

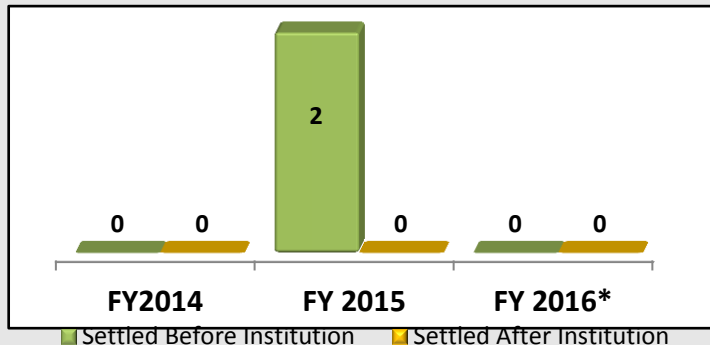
IPR - Settlements



CBM - Settlements



PGR - Settlements

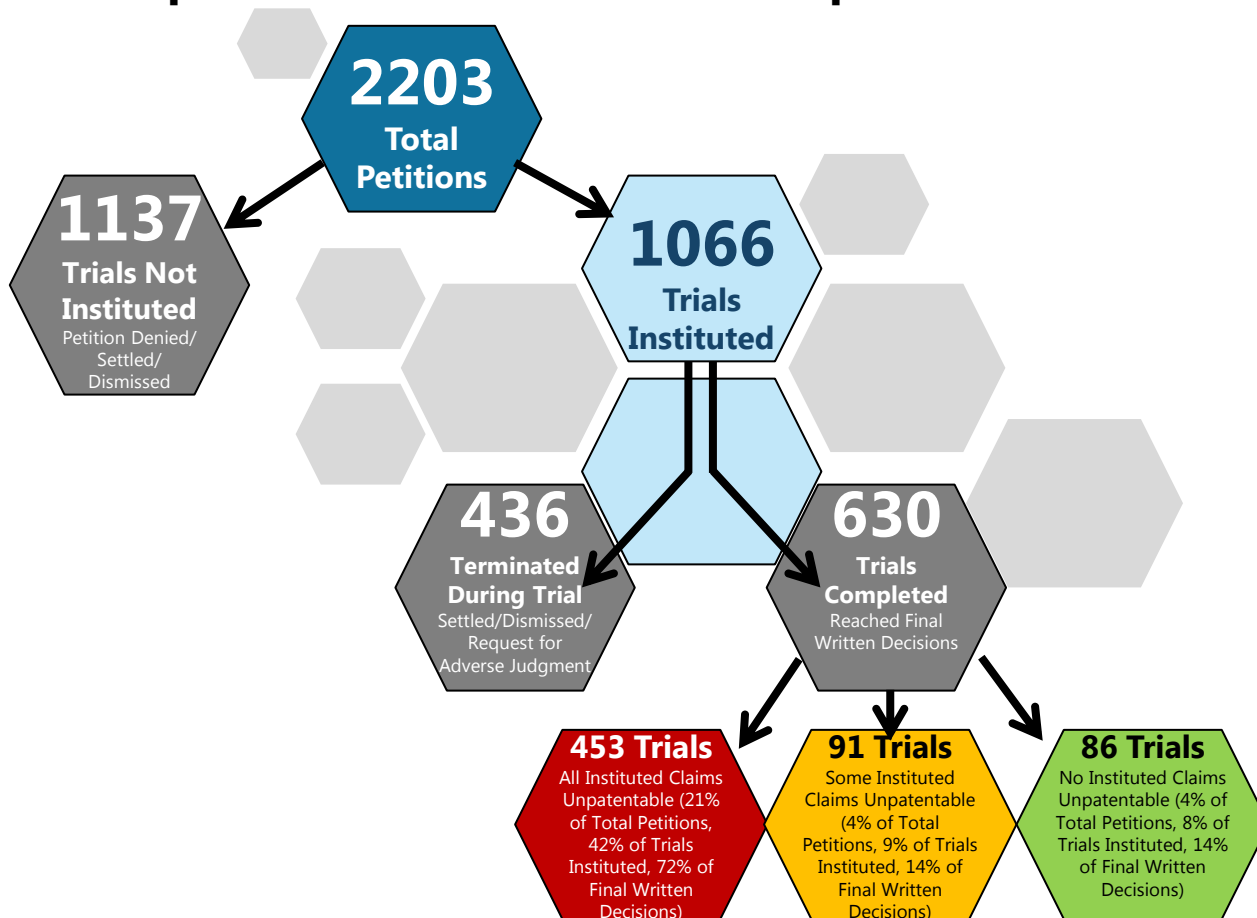


Narrative:

These three sets of bar graphs show settlements in AIA trials broken down by settlements that occurred prior to institution and settlements that occurred after institution in IPR, CBM, and PGR proceedings.

***Data current as of: 10/31/2015**

Disposition of IPR Petitions Completed to Date*



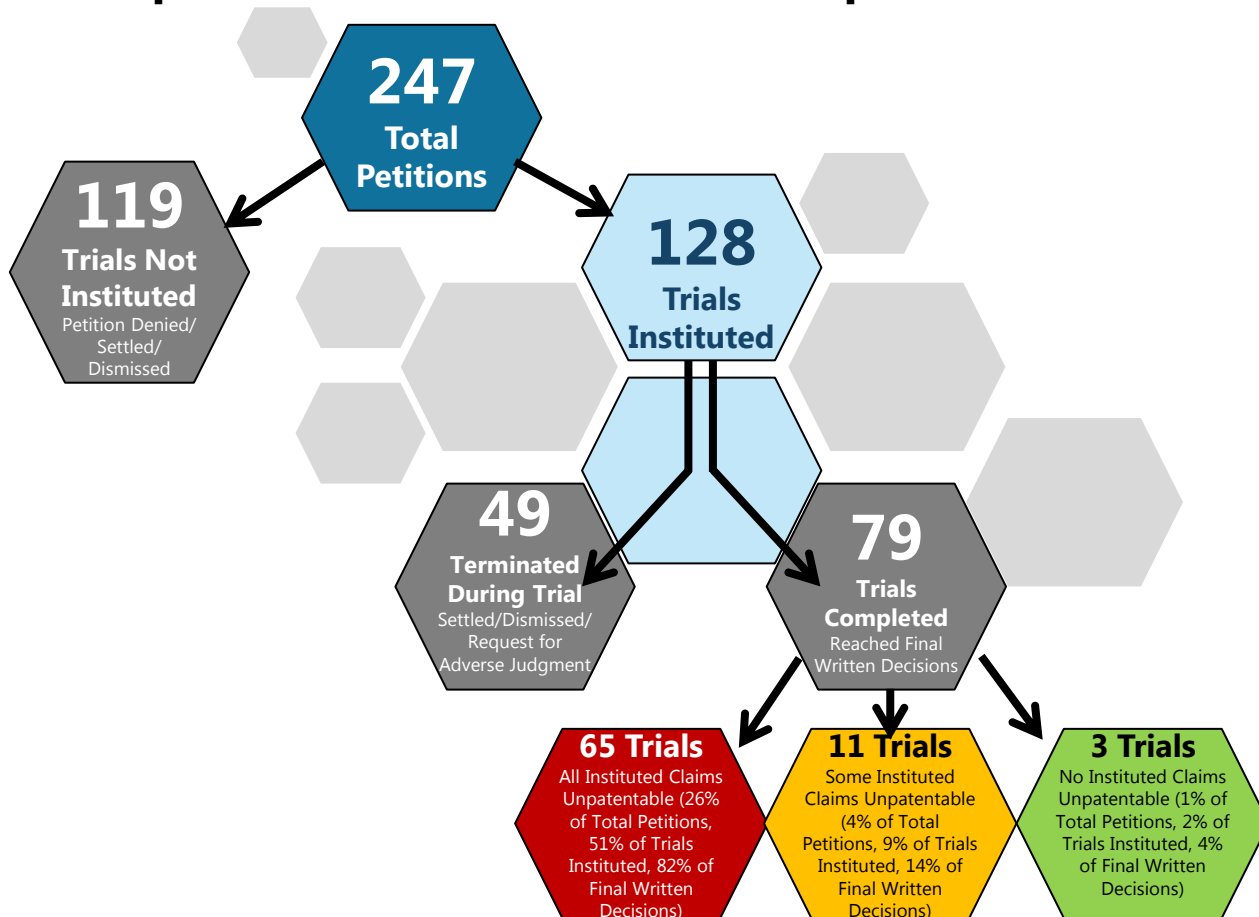
Narrative:

This graph shows a stepping stone visual depicting the outcomes for all IPR petitions filed to-date that have reached a final disposition.

*Data current as of: 10/31/2015

uspto

Disposition of CBM Petitions Completed to Date*

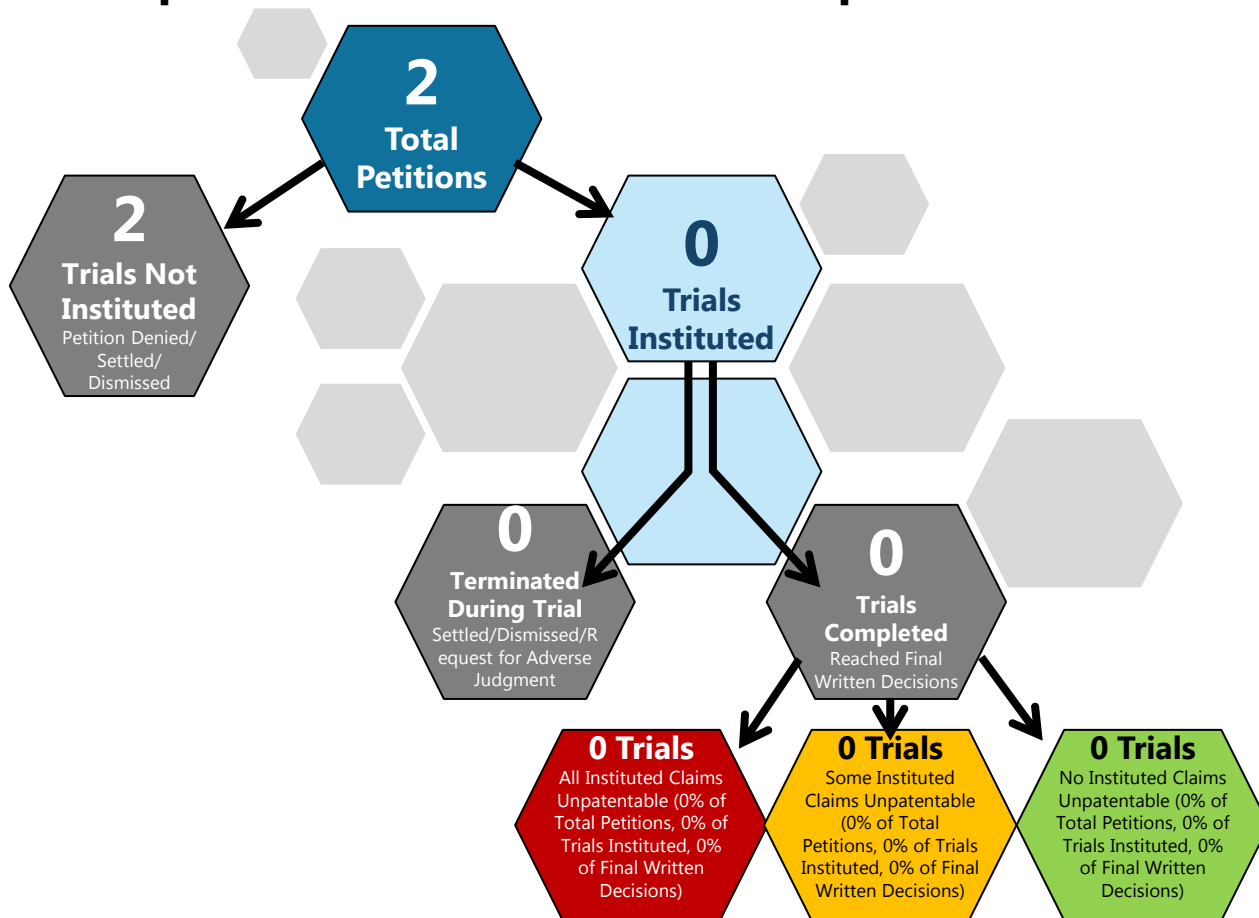


Narrative:

This graph shows a stepping stone visual depicting the outcomes for all CBM petitions filed to-date that have reached a final disposition.

*Data current as of: 10/31/2015

Disposition of PGR Petitions Completed to Date*



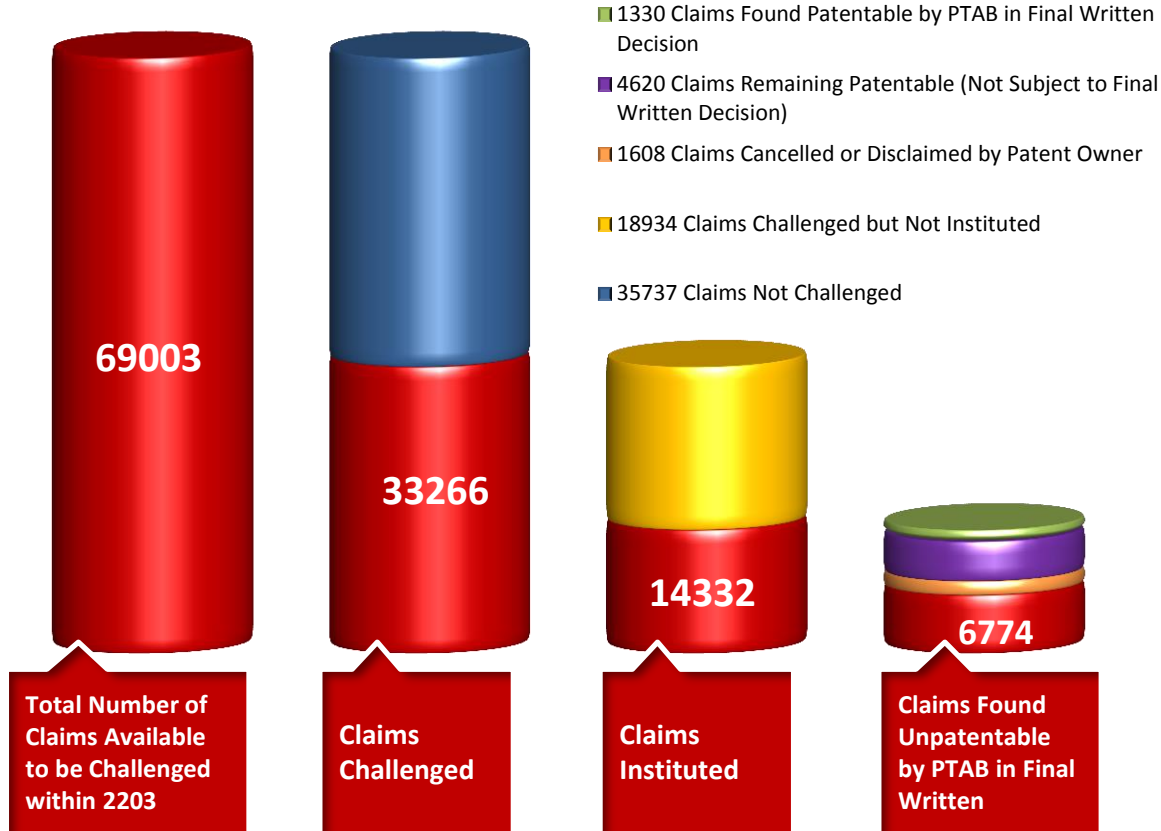
Narrative:

This graph shows a stepping stone visual depicting the outcomes for all PGR petitions filed to-date that have reached a final disposition.

*Data current as of: 10/31/2015

uspto

IPR Petitions Terminated to Date*



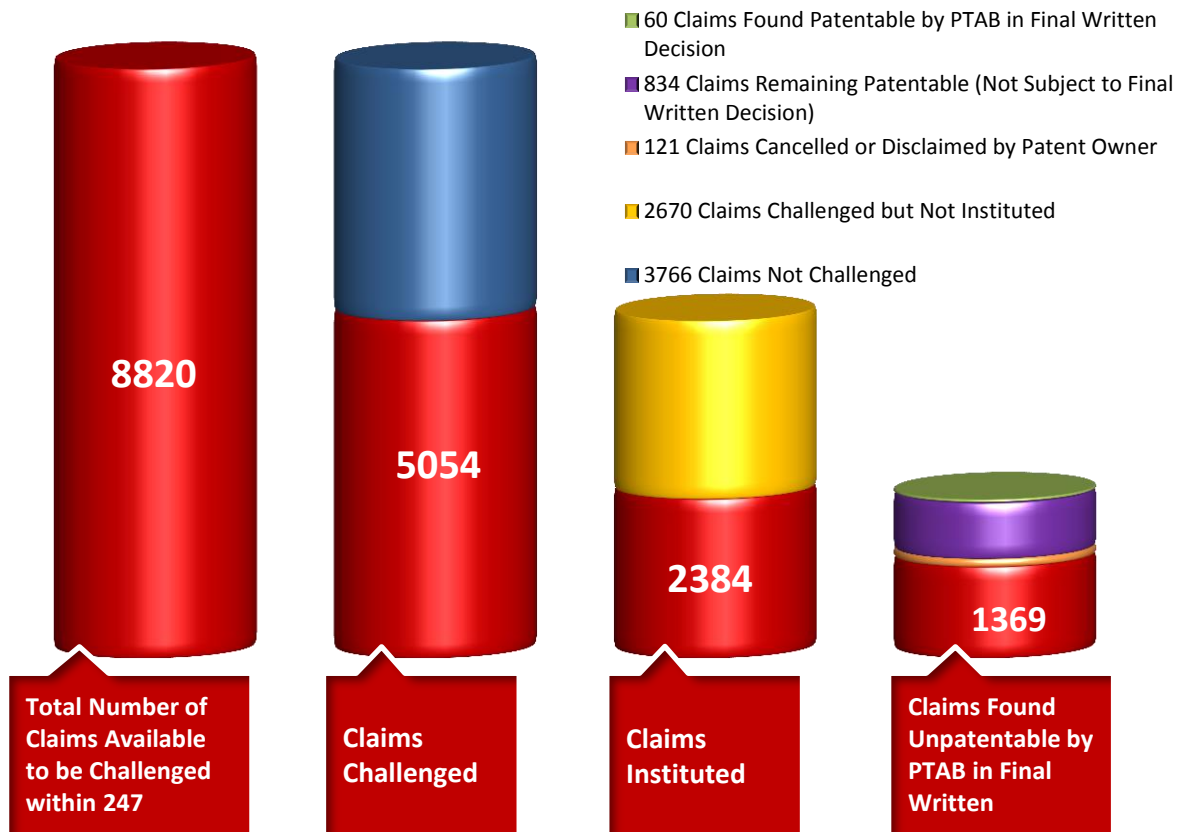
Narrative:

This visual contains four cylinders. The first cylinder shows the total number of claims available to be challenged in the IPR petitions filed. The second cylinder shows the number of claims actually challenged and not challenged. The third cylinder shows the number of claims on which trial was instituted and not instituted. The fourth cylinder shows the total number claims found unpatentable in a final written decision, the number of claims canceled or disclaimed by patent owner, the number of claims remaining patentable (not subject to a final written decision), and the number of claims found patentable by the PTAB.

Note: "Completed" petitions include terminations (before or after a decision on institution) due to settlement, request for adverse judgment, or dismissal; final written decisions; and decisions denying institution.

***Data current as of: 10/31/2015**

CBM Petitions Terminated to Date*



Narrative:

This visual contains four cylinders. The first cylinder shows the total number of claims available to be challenged in the CBM petitions filed. The second cylinder shows the number of claims actually challenged and not challenged. The third cylinder shows the number of claims on which trial was instituted and not instituted. The fourth cylinder shows the total number claims found unpatentable in a final written decision, the number of claims canceled or disclaimed by patent owner, the number of claims remaining patentable (not subject to a final written decision), and the number of claims found patentable by the PTAB.

Note: "Completed" petitions include terminations (before or after a decision on institution) due to settlement, request for adverse judgment, or dismissal; final written decisions; and decisions denying institution.

***Data current as of: 10/31/2015**

AIA Trial Rulemaking Update

AIA Rulemaking

- In response to stakeholder requests, the Office moved forward with two rule packages:
 1. A first final rule package that encompassed less difficult “quick-fixes” based upon both stakeholder comments and internal PTAB suggestions, including more pages for briefing for motions to amend and for petitioner’s reply brief; and
 2. A second proposed rule package that published August 20, 2015.
- The second proposed rule package addresses the remaining issues raised in comments received from the public, as well as providing more guidance concerning our growing experience with AIA proceedings.
- The USPTO initially indicated that written comments must be received on or before October 19, 2015. In view of stakeholder requests for additional time to submit comments on the proposed amendments to the rules of practice for trials, the USPTO extended the period for public comment to November 18, 2015. The Office will issue a final rule, responding to these comments, and also issue a revised Office Patent Trial Practice Guide reflecting guidance concerning our current practice in handling AIA proceedings.

AIA Rulemaking

In the second proposed rule package, the Office:

- Proposes to allow patent owners to include, with their opposition to a petition to institute a proceeding, new testimonial evidence such as expert declaration, responding to commentary raising concerns that patent owners are disadvantaged by current rules letting petitioners' evidence go unanswered before a trial is instituted
- Proposes a new requirement on practitioners before the PTAB, akin to the Rule 11 requirements in federal courts, that would give the USPTO a more robust means with which to police misconduct
- Proposes to clarify that the PTAB will use the claim construction standard used by district courts for patents that will expire during proceedings and therefore cannot be amended, while confirming the use of broadest reasonable interpretation (BRI) for all other cases
- Notes the PTAB's development of motions-to-amend practice through its own body of decisions, including a recent decision that clarified what prior art a patent owner must address to meet its burden of proof
- Proposes using a word count for major briefing so that parties are free to present arguments and evidence to the Office in a way that a party deems is most effective, including presenting arguments in claim charts

Pilot Programs

Expedited Patent Appeal Pilot (EPAP)

- *Ex parte* appeal accorded special status when another is withdrawn
- Pilot effective June 19, 2015 for up to a year
- Timing Goal - 2 months to decide petition & 4 months from the date of petition grant to decide appeal
- Data through November 16, 2015: 22 petitions filed (20 granted and 2 denied); Average time to decide petition approximately 2 days

Small Entity Pilot Program

- Published 09/16/2015
- Provides opportunity for small entities to secure expedited review
- Small entities with a single pending appeal
- Agree to review based on one claim
- No rejections under §112
- Timing Goal - 2 months to decide petition & 4 months from the date of petition grant to decide appeal
- Data through November 16, 2015: 12 petitions filed (8 granted and 4 denied); Average time to decide petition approximately 2 days

Proposed Pilot Program Exploring an Alternative Approach to Institution Decisions

published August 25, 2015

- Goal is to explore efficiency of modifying the approach to institution
- Petition would be assigned to a single judge
- If instituted, two additional judges would be added
- The USPTO initially indicated that written comments must be received on or before October 26, 2015. In view of stakeholder requests for additional time to submit comments on the proposed pilot program, the USPTO extended the period for public comment to November 18, 2015

Proposals to Congress to Amend AIA Trial Proceedings

September 2015 Study and Report on the Implementation of the America Invents Act

- Two proposals to Congress to amend AIA Trial proceedings:
 - Clarify joinder provision for IPR proceedings to state that same party joinder is permitted
 - Clarify that timely correction of real party in interest identification is permitted where error arose without deceptive intent

Questions and Comments

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